REMARKS

By this amendment, Applicant amends claims 20, 30, and 33 to more clearly define the present invention and amends claim 26 to correct a minor typographical error. Claims 20-27, 30, 31, and 33 are currently pending.

In the Office Action, the Examiner rejected claims 20, 24-26, 30 and 33 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Publication Application No. 2002/0115447 to Martin et al. (hereinafter Martin); rejected claims 22 and 23 under 35 U.S.C. § 103(a) as being unpatentable over Martin; and objected to claims 21, 27 and 31 as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant files herewith an Information Disclosure Statement citing, *inter alia*, an Office Action mailed July 23, 2004 for a co-pending parent Application No. 09/929,034.

The Examiner rejected claims 20, 24-26, 30 and 33 under 35 U.S.C. § 102(e) as anticipated by Martin. Applicant traverses this rejection.

Claim 20 defines a method for determining for a wireless device a signal coverage along a route. Moreover, claim 20 routes a combination of steps including, inter alia, "determining one or more local means based on the received signal strength information and a speed of a receiver of the received signal strength information."

In contrast to claim 20, Martin discloses methods and systems for antenna infrastructure placement. Specifically, Martin's system includes a database configured with information used to place the stationary base station antennas of wireless service providers. (Abstract). Since these antenna's are stationary, the Martin system would

not perform the step of "determining one or more local means based on the received signal strength information and a speed of a receiver of the received signal strength information," as recited in claim 20. Furthermore, although the Examiner cites to Martin at paragraph 30 (Office Action, p. 2) to support his rejection, the cited paragraph teaches "displaying ... area coverage information;" the cited paragraph is thus completely silent with respect to the "determining one or more local means ... " recitation of claim 20. As such, Martin fails to disclose at least the claim 20 step of "determining one or more local means based on the received signal strength information and a speed of a receiver of the received signal strength information." Therefore, claim 20 is not anticipated by Martin, and the rejection under 35 U.S.C. § 102(e) of claim 20 and claims 24-26, at least due to their dependency from claim 20, should be withdrawn.

Claims 30 and 33, although of different scope, include recitations that are similar to allowable claim 20. For at least the reasons given above with respect to claim 20, claims 30 and 33 are not anticipated by Martin, and the rejection under 35 U.S.C. § 102(e) of those claims should be withdrawn.

The Examiner rejected claims 22 and 23 under 35 U.S.C. § 103(a) as being unpatentable over Martin. Applicant traverses this rejection.

Claims 22 and 23 depend from claim 20 and include all the steps and recitations therein including, inter alia, "determining one or more local means based on the received signal strength information and a speed of a receiver of the received signal strength information." For at least the reasons given above, Martin fails to suggest or disclose at least this step. Moreover, even if Martin was modifiable in the manner proposed by the Examiner (and Applicant does not agree that it is), the Examiner's

modifications to Martin fail to cure its deficiencies. Claims 22 and 23 are thus allowable over Martin, and the rejection of claims 22 and 23 under 35 U.S.C. § 103(a) should be withdrawn.

Moreover, the Examiner concedes that Martin does not explicitly teach the claim elements of each of claims 22 and 23. (Office Action, p. 3). However, the Examiner ignores the acknowledged shortcomings of Martin and then appears to take Official Notice to fill such clear gaps in Martin. Applicant disagrees, and submits that the Examiner appears to be improperly taking Official Notice with respect to claims 22 and 23. The Examiner's statements are unsupported by any factually-based evidence and constitute unsubstantiated generalizations of questionable relevance to Applicant's claims.

Applicant refers the Examiner to the February 21, 2002 Memorandum from USPTO Deputy Commissioner for Patent Examination Policy, Stephen G. Kunin, regarding "Procedures for Relying on Facts Which are Not of Record as Common Knowledge or for Taking Official Notice" ("Memorandum"). In relevant part, the Memorandum states, "If the examiner is relying on personal knowledge to support the finding of what is known in the art, the examiner must provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding." (Memorandum, p. 3). Should the Examiner maintain the objection, Applicant submits that the Examiner must provide "the explicit basis on which the examiner regards the matter as subject to Official Notice and [allow Applicant] to challenge the assertion in the next reply after the Office Action in which the common knowledge statement was made" (*Id.* at 3, emphasis in original), or else withdraw the objection. Absent a factual

basis on the record for the Examiner's taking of Official Notice, the rejection under 35 U.S.C. § 103(a) of claims 22 and 23 should be withdrawn for this additional reason.

In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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